No. 99-5445

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
25
OFFICE OF THE CLERK

MICHAEL CARMIE ANTONELLI — PETITIONER
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

[x] Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

UNITED STATES COURT OF APPEAL FOR THE 7th Circuit

United states District Court for the Northern District of Illinois

[ ] Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

x Michael Antonelli
(Signature)

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21 pp

99-5445

AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, Michael Antonelli, am the petitioner in the above-entitled case. In support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

I further swear that the responses I have made to the questions and instructions below relating to my ability to pay the cost of proceeding in this Court are true.

1. Are you presently employed? Yes X No __

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer. Approx. $20/month @ the Federal Correctional Institution at Greenville, Illinois 62246 as a recreation yard worker.

b. If the answer is no, state the date of your last employment and the amount of salary or wages per month which you received. N/A

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other sources? Yes X No __

a. If the answer is yes, describe each source of income and state the amount received from each during the past twelve months. I received several gifts & donations from friends and relatives in order to pay for basic prison needs such as the xeroxing and stamps for legal work and other essentials. I cannot recall exact names, dates and amounts. I paid several filing fees also.(Approx $2000 total)

3. Do you own any cash or have a checking or savings account? Yes ___ No X

a. If the answer is yes, state the total value of the items owned.

N/A

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing) Yes ___ No X

a. If the answer is yes, describe the property and state its approximate value.

N/A

5. List the persons who are dependent upon you for support and state your relationship to those persons.

None at Present.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on: June 21, 19 99

X Michael Antonelli
(Signature)

(28 USC Section 1746)

No. 99-5445

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL C. ANTONELLI — PETITIONER
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MICHAEL CARMIE ANTONELLI Reg No. 04053-164
(Your Name)
Box 5000
(Address)
Greenville, Illinois 62246
(City, State, Zip Code)
none
(Phone Number)

99-5445
Antonelli

QUESTION(S) PRESENTED

1. Whether relief from a judgement by means of AUDITA QUERELA exists to plug a gap in the system of postconviction remedies in the federal postconviction scheme ?

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINIONS BELOW 1

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 4

REASONS FOR GRANTING THE WRIT 6

CONCLUSION 9

INDEX TO APPENDICES

APPENDIX A : Order of the United States District Court for the Northern District of Illinois, Eastern Division dated March 4, 1997;

APPENDIX B : Order of the United States Court of Appeals for the Seventh Circuit dated March 9, 1999;

APPENDIX C : Order of the United States Court of Appeals for the Seventh Circuit dated March 30, 1999;

APPENDIX D : Response to motion of the United States to Summarily Affirm the District Court and/or Dismiss this appeal dated January 12, 1999;

APPENDIX E : Petition to Rehear dated March 19, 1999;

APPENDIX F : Order of the United States District Court for the Northern District of Illinois, Eastern Division dated March 15, 1999;

APPENDIX G : MOTION TO ISSUE WRIT OF AUDITA QUERELA filed February 27, 1997;

APPENDIX H : MEMORANDUM IN SUPPORT OF AUDITA QUERELA RELIEF. (No exhibits)(only excerpts)

TABLE OF AUTHORITIES CITED

PAGE NUMBER

CASES

United States v Kimberlin, 675 F 2d 866 (7th Cir 1982) 6

United States v Salgado, 692 F Supp 1265 (E.D. Wash 1988) 6

United States v Ayala, 894 F 2d 425 (D.C. Cir 1990) 6

United States v Ghebreziabher, 701 F Supp 115 (E.D. La 1988) . . 7

United States v Grajeda-Perez, 727 F Supp 1374 (E.D. Wash 1989) . 7

United States v Morgan, 346 US 502 (1954) 8

Felker v Turpin, (citation ommitted) 8

STATUTES AND RULES

28 USC Section 1651 4

28 USC section 2241 7

28 USC Section 2255 7

OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix ____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix ____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 9, 1999.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: March 30, 1999, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on _____(date) in Application No. A-_____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on _____(date) in Application No. A-_____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTI .L AND STATUTORY PROVISION VOLVED

Title 28 USC section 1651 (a)

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

STATEMENT OF THE CASE

Petitioner was convicted in the United States District Court for the Northern District of Illinois, Eastern Division in 1979 for the offense of Maliciously damaging a building by explosive device. Before sentencing he was evaluated by a battery of psychologists and psychiatrist and found to be incompetent. At sentencing, the district court had before it, including the presentence report, a plethora of bizzare incedents that unequivocally depict him as one suffering from mental illness. He was sentenced to 15 years imprisonment in addition to a prior 4 year sentence, and later a three year sentence. Petitioner yet serves the incarceration period on parole violation.

Despite the unequivocal fact that petitioner suffered from mental disease and defect since the time of the bombings, the courts, prisons authorities, parole authorities and probation department have ignored this fact and he was never treated for any mental illness until the 1990's. He begged the Parole Board to give him mental health aftercare. The attorneys and the Bureau of Prisons psychiatrists and psychologists, who testified at his parole hearings, also requested mental health aftercare. Petitioner never received any ! He consequently has come back to prison SEVEN TIMES, each time the ATTORNEY GENERAL via the Bureau of Prisons and the United States Parole Commission were contributory negligent in that ALL the Mental Health professionals have stated that had petitioner been treated and given MENTAL HEALTH AFTERCARE, he would not have violated parole.

Petitioner again in 1997 was found incompetent to stand trial in the federal courts in Chicago, Illinois. This sparked another evaluation and he finally was properly treated and given the MENTAL AFTERCARE he begged for and should have had the last SEVEN TIMES he returned to prison on parole violations This sparked him to move the sentencing court in a MOTION TO ISSUE WRIT OF AUDITA QUARELA under the ALL WRITS ACT 28 USC Section 1651. (See Appendix G)

Petitioner filed a memorandum in support. (Appendix H) Without any explanation whatsoever, the district court denied the motion. (Appendix A) The Petitioner appealed to the Seventh Circuit and filed an opening brief. The Respondent moved to summarily affirm and/or dismiss the appeal. Petitioner responded. (Appendix D) The Seventh Circuit REMANDED to the district court with instructions to dismiss the petition for want of jurisdiction. (See Appendix B) The Seventh Circuit treated the petition as a successive 2255 motion attacking the conviction and sentence. Petitioner filed a PETITION TO REHEAR explaining that he was not attacking the sentence but the execution of the judgement. (Appendix E) The Petition to Rehear was denied on March 30, 1999. (Appendix C) The district court denied the 2255 created by the Seventh Circuit on March 15, 1999. (Appendix F)

Petitioner asks for review of the Seventh Circuit's Order of March 9, 1999.

R. ONS FOR GRANTING THE PETIT

Petitioner brought a legal objection to the execution of the sentence imposed which arose subsequent to the conviction and imposition of sentence which was not redressable pursuant to any other post-conviction remedy. The defense was not discovered until after judgement was rendered. The defense is relevant to timing not substance. SEVEN TIMES the Attorney General had not done the right thing in petitioner's case. He therefore requested a common sense approach and that he be releived of the inequitable consequences of parole and that he be put on the probation of the court. (a sentence of probation was imposed to follow his parole) He asked for AUDITA QUERELA relief. (See Appendix G; excluding exhibits)

The Seventh Circuit first recognized that relief from a judgement by means of AUDITA QUERELA was necessary to plug a gap in the system of postconviction remedies in the federal postconviction scheme in United States v Kimberlin, 675 F 2d 866 (1982).

Courts have ruled that where equities militate strongly in favor of relieving a defendant from prospective operation of a judgement the Court has the authority to take any action that could be done. Though jealously guarded, the circumstances set forth in petitioner's case do warrant such extraordinary relief to cure the freakish case before this Court. The definition of AUDITA QUARELA appears sufficiently broad to encompass the scenario presented herein. See United States v Salgado, 692 F Supp 1265 (E.D. Wash 1988).

The distinction between AUDITA QUERELA and other forms of relief lies not in the character of the grounds for voiding a judgement, such as whether the grounds are purely equitable, but in the timing of the occurrence of those grounds. United States v Ayala, 894 F 2d 425 (D.C. Cir 1990).

It is appellant's position that because Government is contributorily negligent in the execution of the judgement therefore at least partially responsible for the SEVEN TIMES that petitioner had to come back to prison, given the Government's own doctors stated that had he had the proper MENTAL HEALTH AFTERCARE in the first place, he would not have violated his parole. The prospect of any further parole for this petitioner makes the contunuing effect of his judgement of sentence and the execution of it unfair. It is within the niche of AUDITA QUERELA that this wrong can be righted. This freakish remedy afforded petitioner brings out these new matters in defense which are only raisable for the first time after the judgement of sentence. This postjudgement change cannot be brought out in any other context.

In the interest of justice petitioner asks that the United States Attorney also join in his bid for relief under audita querela. United States v Ghebreziabher, 701 F Supp 115 (E.D. La 1988).

Within the language of the ALL-WRITS ACT their is wide latitude to construct any remedy necessary to "acheive justice," and to right a "wrong that may otherwise stand uncorrected." (Even if it is under the coin of or rubric of HABEAS CORPUS under 28 USC Section 2241) So, in the event AUDITA QUERELA is found by this Court to either not apply or not exist, to the situation at hand, petitioner requests that a remedy be constructed necessary to "acheive justice" such as a WRIT FOR RELIEF FROM JUDGEMENT. See United States v Grajeda-Perez, 727 F Supp 1374 (E.D. Wash 1989).

The Seventh Circuit chose to ignore AUDITA QUERELA and treat the motion as a successive 2255 attacking the sentence. However, petitioner is not attacking the conviction or the fact of sentence. He attacks the execution of sentence.

Several courts throughout the nation say AUDITA QUERELA yet exists as you can see by the cases herein. Some courts believe it does not. The Seventh Circuit now states it is another 2255 and must be treated under the new AEDPA which only the "null-set" can meet.

To maintain uniformity in the courts and answer the question of whether there exists to plug a gap in the federal postconviction scheme, petitioner believes this Court should grant review of this case.

The last big case regarding 28 USC Section 1651 was United States v Morgan, 346 US 502 (1954) and that addressed CORAM NOBIS relief. The petitioner believes this Court needs to address 1651 again, besides the recent Felker v Turpin case, (citation ommitted) because AUDITA QUERELA either exists or it does not; and the courts of this country need to know the answer to that question.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

x Michael C. Antonelli

Date: June 2, 1999

United States Court of Appeals

pb

For the Seventh Circuit
Chicago, Illinois 60604

March 9, 1999 ✓

Before

Hon. WILLIAM J. BAUER, *Circuit Judge*

Hon. JOEL M. FLAUM, *Circuit Judge*

Hon. DIANE P. WOOD, *Circuit Judge*

UNITED STATES OF AMERICA, Plaintiff-Appellee, No. 97-1787 v. MICHAEL C. ANTONELLI, Defendant-Appellant.	] Appeal from the United] States District Court for] the Northern District of] Illinois, Eastern] Division.]] No. 78 CR 721] William T. Hart,] Judge.

ORDER

The following are before the Court:

1. "Motion of the United States to Summarily Affirm the District Court and/or Dismiss This Appeal," filed on January 8, 1999, by counsel for appellee.

2. "Response to Motion of the United States to Summarily Affirm the District Court and/or Dismiss This Appeal," filed on January 15, 1999, by appellant pro se.

Michael Antonelli, a federal prisoner, filed a petition for a writ of audita querela in the district court, which that court denied without explanation. In his petition, Antonelli recites his incarceration history, and complains of the lack of "aftercare" for his "mental illness." Although at the outset of the petition Antonelli claims that he is not challenging his conviction or sentence[1],

[1]In 1979, Antonelli was convicted and sentenced for conspiracy (18 U.S.C. § 371), firearms offenses (26 U.S.C. § 5861(d)), and explosives/arson offenses (18 U.S.C. § 844(I)).

at the end "[h]e asks that his sentence of imprisonment be vacated and [that] he be placed on the probation of the Court" with "mental health aftercare" as a condition thereof. Petition at ¶¶ 27-28.

We agree with the government that Antonelli's petition for a writ of audita querela is really a motion for relief under 28 U.S.C. § 2255. *See* Motion at ¶4. Despite Antonelli's attempts to evade the strictures of 28 U.S.C. § 2255 and *Nunez v. United States*, 96 F.3d 990, 991 (7th Cir. 1996), we believe that Antonelli is attacking his conviction and sentence. Therefore, because Antonelli has previously filed such motions, this latest attempt must be disposed of pursuant to this Court's decision in *Nunez*. Accordingly,

IT IS ORDERED that the district court's judgment is **VACATED**, and this appeal is **REMANDED** with instructions to dismiss the petition for want of jurisdiction. *See* 28 U.S.C. § 2255; *Nunez*, 96 F.3d at 991.

IT IS FURTHER ORDERED that the government's motion is **DENIED** as **MOOT**.

United States Court of Appeals

pb

For the Seventh Circuit
Chicago, Illinois 60604

March 30, 1999

Before

Hon. WILLIAM J. BAUER, *Circuit Judge*

Hon. JOEL M. FLAUM, *Circuit Judge*

Hon. DIANE P. WOOD, *Circuit Judge*

UNITED STATES OF AMERICA, Plaintiff-Appellee,	]	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 97-1787 v.	]	No. 78 CR 721
MICHAEL C. ANTONELLI, Defendant-Appellant.	]	William T. Hart, Judge.

Upon consideration of the **PETITION TO REHEAR**, filed on March 25, 1999, by the pro se appellant,

IT IS ORDERED that the Petition is **DENIED**.

C

Minute Order Form (rev. 12/90)

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS

Name of Assigned Judge or Magistrate Judge	William T. Hart	Sitting Judge if Other Than Assigned Judge	
Case Number	78 CR 721	Date	March 4, 1997
Case Title	U.S.A. v. Michael C. Antonelli		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd-party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "MOTION" box above]

(2) ☐ Brief in support of motion due _____

(3) ☐ Answer brief to motion due _____ Reply to answer brief due _____

(4) ☐ Ruling / ☐ Hearing on _____ set for _____ at _____

(5) ☐ Status hearing ☐ held ☐ continued to ☐ set for ☐ re-set for _____ at _____

(6) ☐ Pretrial conf. ☐ held ☐ continued to ☐ set for ☐ re-set for _____ at _____

(7) ☐ Trial ☐ Set for ☐ re-set for _____ at _____

(8) ☐ Bench Trial ☐ Jury Trial ☐ Hearing held and continued to _____ at _____

(9) ☐ This case is dismissed ☐ without ☐ with prejudice and without costs ☐ by agreement ☐ pursuant to ☐ FRCP 4(j) (failure to serve) ☐ General Rule 21 (want of prosecution) ☐ FRCP 41(a)(1) ☐ FRCP 41(a)(2)

(10) ☒ [Other docket entry] Defendant, Michael C. Antonelli's motion to issue writ of Audita Querela is denied.

(11) ☐ [For further detail see ☐ order on the reverse of ☐ order attached to the original minute order form.]

☐ No notices required, advised in open court.	A		number of notices
☐ No notices required.			date docketed
☐ Notices mailed by judge's staff.			docketing dpty. initials
☐ Notified counsel by telephone.			date mailed notice
☐ Docketing to mail notices.			mailing dpty. initials
☐ Mail AO 450 form.			
☐ Copy to judge/magistrate Judge.			
courtroom deputy's initials	Date/time received in central Clerk's Office		Document #

Minute Order Form (06/97)

United Sta. istrict Court, Northern District ilinois

Name of Assigned Judge or Magistrate Judge	William T. Hart	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	78 CR 721 - 1	DATE	3/15/1999
CASE TITLE	United States vs. Michael C. Antonelli		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] ☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] In accordance with the Seventh Circuit's instructions in United States v. Antonelli, No. 97-1787 (7th Cir. March 9, 1999) (unpublished order), Minute Order [89] is vacated. Defendant's motion to issue writ of audita querela [86] is construed as a motion pursuant to 28 U.S.C. § 2255 and, as such, is denied without prejudice for lack of subject matter jurisdiction. It is a successive § 2255 motion and leave to file it was not obtained from the Seventh Circuit. See Nunez v. United States, 96 F.3d 990 (7th Cir. 1996).

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

☐ No notices required, advised in open court.	F	1 number of notices	Document Number
☐ No notices required.		date docketed	
✓ Notices mailed by judge's staff.		docketing deputy initials	
☐ Notified counsel by telephone.		3/15/1999 date mailed notice	
☐ Docketing to mail notices.		rjm mailing deputy initials	
☐ Mail AO 450 form.			
☐ Copy to judge/magistrate judge.			
courtroom deputy's initials	Date/time received in central Clerk's Office		